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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,653	02/06/2004	Anil Kamath	111210-134991	7631
25943 7590 10/14/2009 Schwabe Williamson & Wyatt PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204				
EXAMINER MANSFIELD, THOMAS L				
ART UNIT 3624		PAPER NUMBER		
MAIL DATE 10/14/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,653

Applicant(s)

KAMATH, ANIL

Examiner

THOMAS MANSFIELD

Art Unit

3624

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-18, 20-23 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-18, 20-23, and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendments

1. This Continued Examination Office Action is in reply to the Request for Continued Examination filed on 23 July 2009.
2. Claims 1 and 14 have been amended.
3. Claim 19 has been cancelled.
4. Claim 27 is new and has been added.
5. Claims 1-5, 7-18, 20-23, and 25-27 are currently pending and have been examined.

Continued Examination Under 37 CFR 1.114

6. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 July 2009 has been entered.

Response to Amendment

Response to Arguments

7. Applicant's arguments filed 23 July 2009 have been fully considered but they are not persuasive.
8. Applicant submits that Davis et al. (Davis) (U.S. 7,363,300) in view of Kim (U.S. Pub. No. 2008/0097830) does not teach or suggest in amended Claim 1: (1) *determining, by a computing device, a bidding strategy for a plurality of marketing options; and, (2) the bidding strategy directing allocation of monetary resources (rank value, change bids function) among the marketing options* [see Remarks page 7, last paragraph through page 8, third paragraph].

9. With regard to argument (1), the Examiner respectfully disagrees. Davis teaches *determining, by a computing device, a bidding strategy* (The higher the bid, the more advantageous the placement in the search result list, influence a position for a search listing) *for a plurality of marketing options* (search listing, A higher bid will result in a higher rank value and a more advantageous placement), *by solving an objective function using the specified model* (The rank value determines the position where the promoter's web site description will appear) (Davis, see at least column 5, line 21 through column 6, line 19, column 9, lines 24-60, column 12, lines 25-59, column 13, lines 7-28, and column 14, lines 1-49 column 18, lines 8-58).
10. With regard to argument (2), the Examiner respectfully disagrees. Davis in view of Kim teaches *the bidding strategy directing allocation of monetary resources* (revenue Model, residual referral fee, performance-based pricing model) *among the marketing options* (Kim, paragraphs 97-99).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
12. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. (Davis) (U.S. 7,363,300) in view of Kim (U.S. Pub. No. 2008/0097830).

With regard to Claims 1, 14, and 20, Davis teaches *a method, computer readable medium, and apparatus* (Methods and systems for generating a pay-for-performance search result) (see at least column 7, lines 4-7 and column 8, lines 35-41) *comprising*:

- *facilitating, by a computing device, specification of a model* (predictor model) *that model performance metrics* (cost projection algorithm, performance of targeted market segments) *for a plurality of marketing options* (advertiser's search listing) *based at least in part on a plurality of positions* (selected rank) *occupied by the marketing options* (search listing) *in a selected one of on-line query answer sets and contextual advertisements* (selected search term, banner advertising) (see at least column 3, lines 20-45, column 12, lines 25-59, and column 21, lines 31-58).
- *determining, by a computing device, a bidding strategy* (influence a position for a search listing) *for a plurality of marketing options* (search listing, A higher bid will result in a higher rank value and a more advantageous placement), *by solving an objective function using the specified model* (The rank value determines the position where the promoter's web site description will appear) (see at least column 5, line 38 through column 6, line 19, column 9, lines 24-60, column 12, lines 25-59, column 13, lines 7-28, and column 14, lines 1-49 column 18, lines 8-58).

Although Davis teaches a model *that forecasts revenues*, Davis does not specifically teach *a plurality of models* *that forecast revenues*. Kim teaches *a plurality of models that forecast revenues* (Revenue model, performance-based pricing model) in analogous art of internet advertising for the purposes of, "to encourage many Web sites to become Affiliates", and, "Web publishers no longer face the "free" exposure problem" (see at least paragraphs 0097-0099).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the internet advertising method as taught by Kim with the pay-for-performance search result method of Davis. One of ordinary skill in the art would have been motivated to do so for the benefit of decreasing initial free exposure from advertisers and only being charged for actual viewed advertisements that are presented from paid associates of the advertisers (Kim, paragraphs 0097-0099).

Davis does not specifically teach *the bidding strategy directing allocation of monetary resources among the marketing options*. Kim teaches *the bidding strategy directing allocation of monetary resources among the marketing options* (revenue Model, residual referral fee, performance-based pricing model) *among the marketing options* in analogous art of internet advertising for the purposes of, "the Affiliate Web site receiving and displaying the web ad may receive \$0.25, and the Affiliate Web site that first generated the lead by displaying the online query may receive \$0.10" (see at least paragraphs 0097-0099).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the internet advertising method as taught by Kim with the pay-for-performance search result method of Davis. One of ordinary skill in the art would have been motivated to do so for the benefit of providing a share of revenue to partner web sites that advertise for their affiliates (Kim, paragraphs 97-99).

With regard to Claim 2, Davis does not specifically teach *wherein the method further comprises facilitating a user, by the computing device, in creating the plurality of models*. Kim teaches *wherein the method further comprises facilitating a user, by the computing device, in creating the plurality of models* (Revenue model, performance-based pricing model) in analogous art of internet advertising for the purposes of, "to encourage many Web sites to become Affiliates", and, "Web publishers no longer face the "free" exposure problem" (see at least paragraphs 0097-0099).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the internet advertising method as taught by Kim with the pay-for-performance search result method of Davis. One of ordinary skill in the art would have been motivated to do so for the benefit of decreasing initial free exposure from advertisers and only being charged for actual viewed advertisements that are presented from paid associates of the advertisers (Kim, paragraphs 0097-0099).

With regard to Claims 3, 15, and 21, Davis teaches *wherein the models comprise click models (predictor model) for the marketing options that forecast number of clicks for the marketing options for the various positions* (considered to be function of the rank of the search listing) (see at least column 21, lines 31-58).

With regard to Claims 4, 16, and 22, Davis does not specifically teach *wherein the models comprise revenue models for the marketing options that forecast revenues for the marketing options based on click conversions*. Kim teaches *wherein the models comprise revenue models (revenue model) for the marketing options (targeted advertisement) that forecast revenues for the marketing options based on click conversions (click-throughs)* in analogous art of internet advertising for the purposes of, "When the qualified lead surfs to another Affiliate Web site, a targeted advertisement based on their previous online query responses will be delivered to that user" (see at least paragraphs 0098-0099).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the internet advertising method as taught by Kim with the pay-for-performance search result method of Davis. One of ordinary skill in the art would have been motivated to do so for the benefit of decreasing initial free exposure from advertisers and only being charged for actual viewed advertisements that are presented from paid associates of the advertisers (Kim, paragraphs 0097-0099).

With regard to Claims 5, 17, and 23, Davis teaches *wherein the on-line query sets comprises on-line query answer sets of different search engines (INKTOMI, LYCOS, YAHOO!)* (see at least column 10, lines 27-40).

With regard to Claim 7, Davis teaches *wherein said solving comprises solving an object function selected from a group of objective functions including a first objective function ("meta tags") to maximize number of clicks for the marketing options (may attract additional consumer attention), and a second objective function to minimize average cost per click (at little or no marginal cost) for the marketing options (see at least column 2, line 46 through column 3, line 4).*

With regard to Claim 8, Davis teaches *wherein the group of objective functions further include at least one of:*

- *a third objective function to minimize the average cost per customer for the products or services of the marketing options, a fourth objective function to maximize revenue for the products or services of the marketing options, a fifth objective function to maximize profit for the products or services of the marketing options (provide a cost-effective method, is charged in direct proportion to the number of actual visits generated by the search engine, "Project Expenses" selection) (see at least column 4, lines 33-36 and column 21, lines 3-58).*
- *a sixth objective function to minimize marketing expenses for the marketing options (determine a daily expense projection) (see at least column 21, lines 31-58).*
- *a seventh objective function to maximize a number of increases in customer sign-ups or registrations for products or services of the marketing options ("Pay-for-performance") (see at least column 5, lines 4-20).*

With regard to Claim 9, Davis teaches *wherein said solving comprises solving the objective function subject to one or more constraints (bid amount, ordinal values) (see at least column 13, lines 7-28).*

With regard to Claim 10, Davis teaches *wherein the one or more constraints include a constraint (money amount) requiring a traffic level for a URL for a period of time (see at least column 13, lines 7-13).*

With regard to Claim 11, Davis teaches *wherein the one or more constraints include a constraint requiring a marketing option to be at a selected one of a particular on-line query answer set position (advertiser's search listing), and a particular contextual advertisement position (placement location) (see at least column 13, lines 7-28).*

With regard to Claim 12, Davis teaches *wherein the one or more constraints include at least one of a constraint (certain key events) requiring a cost limit for average cost per customer (account balance), a constraint requiring a cost limit for the marketing options (fallen below a specified level), and a constraint requiring a limit on an amount of revenue generated by products or services of the marketing options ("Add Money to Account") (see at least column 13, lines 7-28 and column 14, lines 1-49).*

With regard to Claims 13 and 25-26, Davis teaches *wherein the method further comprises facilitating submission of a bidding for the plurality of marketing options, by the computing device/enable the apparatus, for the positions for the plurality of marketing options based at least in part on the determined bidding strategy* (highest bid amount, has been outbid by another advertiser, notification routine) (see at least column 13, lines 7-28 and column 14, lines 1-49).

With regard to Claim 27, Davis teaches *receiving by the computing device, empirical data for a plurality of performance metrics* (number of clicks for all search terms, sum of all clicks at a given rank) *for a plurality of purchased marketing options; and constructing the model* (predictor model), *by the computing device, using the empirical data* (see at least column 20, line 50 through column 21, line 58).

Conclusion

13. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
- Meisel et al. (U.S. 7,035,812) discloses a system and method for enabling multi-element bidding for influencing a position on a search result list generated by a computer network search engine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS MANSFIELD whose telephone number is (571)270-1904. The examiner can normally be reached on Monday-Thursday 8:30 am-6 pm, alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M./
Examiner, Art Unit 3624

10 October 2009
Thomas Mansfield

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624